

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 8/9/00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Champions for Christ International, Inc.
v.

Bill Glass Ministries

Cancellation No. 27,516

Michael P. Adams of Skjerven, Morrill, MacPherson,
Franklin & Friel, LLP for Champions for Christ
International, Inc.

Stephen L. Grant of Oldham & Oldham Co., LPA for Bill
Glass Ministries.

Before Cissel, **Seeherman** and Bucher, Administrative
Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On April 21, 1998, petitioner, a Texas corporation,
filed a petition to cancel two registrations owned by
respondent, also a Texas corporation. Registration No.
2,043,139 was issued on March 11, 1997 based on a claim
of use in commerce since November 1, 1993. The mark in
that registration is "CHAMPIONS FOR TODAY" and the
services are specified as "evangelistic and ministerial

services," in Class 42. Registration No. 2,048,847 was issued on April 1, 1997 based on a claim of use in commerce since August 1, 1991. The mark in that registration is "WEEKEND OF CHAMPIONS." The services specified in it are also "evangelistic and ministerial services," in Class 42.

As grounds for cancellation, petitioner asserts prior use of the marks "CHAMPIONS FOR CHRIST" and "CHAMPIONS FOR CHRIST, A NEW BREED OF ATHLETE" for providing Christian ministry outreach services to amateur and professional athletes, and that respondent's marks, as used in connection with evangelistic and ministerial services, so resemble petitioner's marks that confusion is likely.

The petition for cancellation goes on to allege that petitioner did own registrations of its pleaded marks prior to the first use dates claimed in the two registrations it seeks to cancel, but that as a result of an oversight, petitioner failed to file an affidavit under Section 8 of the Lanham Act and petitioner's registrations were cancelled. According to petitioner, once petitioner realized its registrations had been cancelled, it filed an application to re-register its "CHAMPIONS FOR CHRIST" mark, but respondent had already

filed the applications which matured into the registrations petitioner here seeks to cancel, and registration to petitioner was refused by the Patent and Trademark Office on the ground of likelihood of confusion with respondent's two registered marks.

Respondent's answer to the Petition to Cancel denied the essential allegations set forth therein. A trial was conducted, during which each party took testimony and introduced evidence. Both parties filed briefs and petitioner filed a reply brief, but an oral hearing before the Board was not requested. Accordingly, we have resolved this dispute based upon the written record and arguments presented by the parties.

The record is accurately described in petitioner's brief. In addition to the registrations sought to be cancelled and various results of discovery, it includes the trial depositions, with exhibits, of Greg Ball, president of petitioner; William Broocks, petitioner's vice president and co-founder; A. C. Green, another vice president of petitioner; and Gene Ellerbee, chairman of the board of directors of respondent Bill Glass Ministries.

Petitioner objected to a number of exhibits to respondent's testimony on the ground that petitioner had

requested these documents during discovery, but that respondent failed to produce them prior to the trial testimony in connection with which they were offered. Respondent provided no response to these objections. Accordingly, we have sustained petitioner's objections as conceded, and have not considered these exhibits. See also: TBMP Section 527.05. Moreover, even if we had considered these exhibits, our decision in this case would be the same.

Our analysis of the record and arguments before us in this proceeding leads us to conclude that confusion is not likely. Although the services with which the parties use their marks are legally identical and priority lies with petitioner, respondent's registered marks create different commercial impressions from those which petitioner's marks create, so confusion is not likely.

The testimony and evidence establish that petitioner began using its pleaded marks well before respondent first used either of its two marks, and that petitioner has continued to use its marks since that first use. Although the answer filed in response to the petition to cancel denied petitioner's allegation of prior use of its mark, respondent does not challenge petitioner's claim of priority. Even Mr. Ellerbee conceded that petitioner's

use in 1984 preceeded respondent's first use of its marks in 1991 and 1993, respectively.

In *In re E. I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), the predecessor of our primary reviewing court listed the principal factors to be considered in determining whether a likelihood of confusion exists. Chief among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression, and the commercial relationship between the goods or services in question, including the channels of trade through which the goods or services move and the level of sophistication of the respective purchasers of them. If there has been opportunity for actual confusion to have taken place, we must also take into account whether this has occurred.

The evidence and testimony clearly establish that the services rendered by the parties under their respective marks are legally identical. Both petitioner and respondent are Christian ministries whose primary activities are sharing the Gospel of Jesus Christ by evangelizing both Christians and potential Christians. Petitioner uses well known athletes to attract athletes and others into its organization. So does respondent. Both parties promote their services in similar ways, and

except for the prisoner population to which respondent's "WEEKEND OF CHAMPIONS" programs are directed, the target audiences and the promotional activities for the services rendered under the respective marks of both parties are similar in most respects. Moreover, the services identified in respondent's registration, evangelistic and ministerial services, include ministry outreach to athletes.

The evidence shows that the people to whom the services of the parties are rendered are in the nature of ordinary consumers who exercise ordinary, reasonable care in selecting an organization to provide these services.

It is clear from the record that if the marks used to identify these similar services were the same or similar, confusion as to source would be likely. As noted above, however, the marks of these parties are not similar enough to make confusion likely.

Petitioner has established that its unregistered marks are distinctive, but it has not pleaded or proved that these marks are famous or that they belong to a family of "CHAMPION"-based marks. We therefore cannot accord petitioner's marks the broader scope of protection to which famous marks or members of families of marks are entitled.

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Neither of the two marks pleaded by petitioner, "CHAMPIONS FOR CHRIST" or "CHAMPIONS FOR CHRIST, A NEW BREED OF ATHLETE," is similar in pronunciation, appearance or meaning to either of respondent's marks, "WEEKEND OF CHAMPIONS" or "CHAMPIONS FOR TODAY." The only thing these marks have in common is the word "CHAMPIONS," but the context in which this word appears in each of the registered marks is quite different from the context in which it is used in petitioner's marks. In connection with petitioner's services, the phrase "CHAMPIONS FOR CHRIST" has a double entendre. It suggests not only that petitioner's services are directed to and rendered by athletic champions, but also that petitioner's members are "CHAMPIONS FOR," in the sense of acting as aggressive advocates for, or supporters of, Christ. "CHAMPIONS FOR CHRIST, A NEW BREED OF ATHLETE" combines both of these connotations with a specific reference to athletes, but the double entendre applies to this mark as well.

Neither of the registered marks has either of these connotations. "WEEKEND OF CHAMPIONS" suggests that the evangelistic program with which it is used takes place on the weekend. As used in this mark, "CHAMPIONS" may be understood to refer to the athletes respondent uses to

render the services, but this word in this context does not have the apparent connotation relating to aggressive support or advocacy that petitioner's marks have.

"CHAMPIONS FOR TODAY" suggests contemporary champions or temporary champions, but as with "WEEKEND OF CHAMPIONS," this connotation, and hence the commercial impression engendered by this mark, is different from the commercial impression engendered by petitioner's marks.

"Christ" is a key element in petitioner's marks, but respondent's two marks do not even allude to Christ. To the contrary, the testimony shows that respondent intentionally chose the "CHAMPIONS OF TODAY" mark, which makes no reference to Christ, out of a fear that many high schools might be reluctant to welcome an organization having such a prominent religious identification. This same reasoning apparently accounts for the absence of any reference to Christ in respondent's other mark. Although "CHAMPIONS" is suggestive of outspoken advocates when it is combined with the phrase "FOR CHRIST," combining "CHAMPIONS" with "FOR TODAY" or "WEEKEND OF" results in marks which, when they are considered in their entirety, are sufficiently different that confusion is not likely even though the services with which they are used are the same.

In summary on this point, in view of the differences in the marks in their entireties, the marks of petitioner and respondent are not likely to cause confusion because the commercial impressions they engender are not similar.

Our conclusion in this regard is not altered by petitioner's testimony and argument that people often refer to petitioner and its programs by using "Champions" as a shortened version of its marks. Petitioner has not pleaded prior service mark rights in this word alone, nor can we conclude on the basis of this testimony that "CHAMPIONS" has become a mark for petitioner's services. In this proceeding, we must determine whether confusion is likely with the two marks upon which the petition is predicated. In any event, the record does not support the conclusion that we should consider the pleadings to have been amended under Rule 15(b) of the Federal Rules of Civil Procedure to include the issue of whether the mark "CHAMPIONS" alone is a basis under Section 2(d) of the Act for cancellation of respondent's registrations.

Equally unpersuasive is petitioner's argument that a likelihood of confusion is demonstrated by an incident of what petitioner asserts to be actual confusion. The testimony on this point simply does not establish that actual confusion took place. Mr. Ellerbee's testimony is

to the effect that a stranger on a flight with him saw his shirt bearing his organization's "Champions for Christ" logo and asked Mr. Ellerbee whether he was affiliated with respondent.

We disagree with Mr. Ellerbee's conclusion that the inquiry from his companion on the airplane constitutes evidence of actual confusion which should be the basis for a finding that confusion is likely. At most, this testimony is evidence that the mark on Mr. Ellerbee's shirt reminded the man of respondent's marks enough to prompt him to make an inquiry.

In summary, notwithstanding that petitioner has established its priority and that the services rendered under the respective marks of these parties are closely related, confusion is not likely because neither of the two marks pleaded by petitioner is similar enough to either of respondent's registered marks to be likely to cause confusion.

Accordingly, the petition to cancel is denied.

R. F. Cissel

E. J. Seeherman

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D. E. Bucher
Administrative Trademark Judges,
Trademark Trial & Appeal Board